IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 16..3..2007

Coram

The Hon'ble Mr. Justice K.CHANDRU

W.P. Nos.46532 and 46533 of 2002

R.Balraj .. Petitioner in both W.Ps.

vs.

1. Tamil Nadu State Transport Corporation
(Kumbakonam Div.I) Ltd.
Railway Station Road
Kumbakonam .. R1 in both W.Ps.

2. The Managing Director
Tamil Nadu State Transport Corporation
(Salem Divn.II) Ltd.
Bharathipuram
Dharmapuri .. R2 in W.P.No.46532 of 2002

3. The Managing Director
Tamil Nadu State Express Transport Corporation
Pallavan Salai
Chennai - 2 .. R2 in W.P.No.46533 of 2002

Petitions filed under Article 226 of the Constitution of India seeking for issue of writ of Certiorarified Mandamus calling for the records of the first respondent made in Memo No.L5/8830/Legal/MD/TMSTC (SLM-DnII)/DPI/1989 dated 28.8.2002 and Memo No.80/90584/DL6/TNSTC/2001 dated28.8.2002 respectively and quash the same and direct the first respondent to disburse the retirement benefit of the petitioner with interest from the date of retirement which is withheld in pursuant to the charge memo.

For Petitioner : Mr.M.Palani
For Respondents : Mr.V.R.Kamalanathan

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C O M M O N O R D E R

The writ petitioner R.Balraj joined the transport Corporation in the year 1972 as Works Manager and worked in Cheran Transport Corporation and later on, he was transferred to the first respondent Corporation and he became the permanent employee of the said Corporation from the year 1976 as Assistant Manager. From the post of Assistant Manager, he was promoted as Deputy Manager in the year 1977 and Senior Deputy Manager in 1983 and

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Manager in 1986 and thereafter, on promotion as Senior Deputy manager, he was transferred to erstwhile Pandiyan Roadways Corporation as General Manager and finally, during the year 1987, he was made Managing Director of the second respondent Corporation. While he was Managing Director, for certain decision taken by him as part of the purchase Committee, two charge memos dated 28.8.2002 were given to him just two days prior to his retirement and he was allowed to retire without prejudice to the disciplinary proceedings and his terminal benefits such as pension, gratuity, Provident Fund were withheld. He sent an explanation denying the charges. It is against the said charge memos dated 28.8.2002, the present writ petitions have been filed.

2. At the time of admission of the writ petition, on 30.12.2002, this Court directed the respondents not to pass any final order on the enquiry until further orders from this Court. The said order came to be confirmed on 16.9.2003.

3. I have heard the arguments of Mr.M.Palani, learned counsel appearing for the writ petitioner and Mr.V.R.Kamalanathan, learned counsel appearing for the respondents and have perused the records.

4. Mr.M.Palani, learned counsel appearing for the writ petitioner referred to certain decisions of this Court and submitted that in the absence of any service rule, there is no power vested on an employer to conduct an enquiry for the alleged misconduct even after a person has reached the age of superannuation. For this purpose, he heavily placed reliance on an unreported judgments of this Court in W.P.No.11398 of 1994 [*N.Arumugam vs. Tamil Nadu Electricity Board, Madras*] disposed on 22.12.1994, W.A.Nos.3055 to 3058 of 2003 [*The Tamil Nadu Civil Supplies Corporation Ltd., Kancheepuram and another vs. K.Mohandoss*], disposed on 07.4.2004 and W.P.No.36027 of 2002 and 31151 of 2003 [*S.Panneerselvam vs. The Tamil Nadu Civil Supplies Corporation Ltd., Chennai*], disposed on 15.3.2005 as well as judgment reported in 2007 (2) M.L.J. 92 [*G.Manoharan vs. Registrar of Co-operative Societies, Chennai and others*]. In the last judgment, this Court referred to judgment of the Supreme Court reported in 1999 (1) L.L.J. 1236 [*Bhagirathi Jena vs. Board of Directors, O.S.F.C.*] wherein it was categorically held as follows:

> "6. No specific provision exists in the Orissa Financial State Corporation Staff Regulations, 1975, for deducting any amount from the Provident Fund consequent to any misconduct determined in departmental enquiry, nor is there any provision for continuance of departmental enquiry after superannuation.

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> 7. In the absence of any such provisions, it must be held that the respondent – Corporation had no legal authority to make any reduction in the appellant's retiral benefits. There is also no provision for conducting a disciplinary enquiry after the appellant's retirement, nor is there any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the appellant had retired from service on 30.6.1995, there was no authority vested in the Corporation for continuing departmental enquiry even for the purpose of imposing any reduction in retiral benefits payable to the appellant. In the absence of such an authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits."

5. In 1997 (8) SCC 60 [*State Bank of India vs. A.N.Gupta and others*], the Supreme Court, in paragraph 16 of the judgment, observed as follows:

> "... Proceeding in the garb of disciplinary proceedings cannot be permitted after an employee has ceased to be in the service of the Bank as Service Rules do not provide for continuation of disciplinary proceedings after the date of superannuation..."

6. The Supreme Court, in a recent decision reported in 2007 (1) SCC 663 [*Jaswant Singh Gill vs. Bharat Coking Coal Ltd. and others*], after following the judgment of the Supreme Court in Bhagirathi Jena's case (cited supra), in paragraph 10 held as follows:

> "... Penalties, however, must be imposed so long an employee remains in service. Even if a disciplinary proceeding was initiated prior to the attaining of the age of superannuation, in the event the employee retires from service, the question of imposing a major penalty by removal or dismissal from service would not arise..."

7. Mr.Kamalanathan, learned counsel appearing for the respondents, apart from reiterating the contention made in the counter affidavit, stated that there are charges against the petitioner which were serious and he was allowed to retire without prejudice to the disciplinary action pending against him. Therefore, it is not open to him to contend otherwise. In this context, he also referred to the letter of the Government dated 02.5.2006 where certain clarifications were sought for from the Government, which are as follows:

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S.No.	*Clarification sought for*	*Clarifications issued*
1.	The period of limitation in which the disciplinary action can be initiated against the officers who normally retired.	Disciplinary action in such cases could not be initiated in respect of any event which took place more than four years before such institution.
2.	The period of limitation in which officers are permitted to retire without prejudice to the disciplinary action is being pending against them.	In such cases, the competent Authority shall issue orders permitting the officer to retire from service without prejudice to the pendency of disciplinary proceedings on the date of superannuation itself. The question of fixing time limit in this regard does not arise.

8. When asked as to what are the service rules relating to the power of the Corporation to retain a Corporation employee beyond the age of superannuation, the learned counsel fairly stated that there is no specific power. But, however, he drew the attention of this Court to Rule No.110 of the Articles of the Corporation wherein the powers of the Government to issue instructions have been given, which reads as follows:

> "Notwithstanding anything contained in any of these Articles, the Government may from time to time issue such directions or instructions as they may think fit in regard to the finances and the conduct of the business and affairs of the Company and the Directors shall duly comply with and give effect to such directives or instructions."

9. The Articles of the Association cannot be raised to the level of any statutory provision and secondly, in the absence of any substantive power to retain an employee of the Corporation, the Corporation cannot rely upon this paragraph in the Articles of Association as well as clarification issued by the Government. Under these circumstances, the attempt of the Corporation to continue the departmental enquiry on the alleged misconduct is clearly illegal and deserves to be quashed.

10. This Court is only concerned about the departmental enquiry against the petitioner. If for any reason, if an employee of the Corporation has committed a loss or damage either to the business or the property of the Corporation, it is not as if the Corporation is helpless. They can always institute civil proceedings for recovery of the same notwithstanding the fact

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whether the person is in service or out of service. In such an event, this defence is not available to any servant of the Corporation. Further, there are also enough provisions in the Companies Act for making such recoveries against the servant of the Company.

11. In the light of the above, the writ petitions shall stand allowed and the impugned orders shall stand set aside. The respondents are directed to settle the terminal benefits of the petitioner in accordance with law within a period of four weeks from the date of receipt of a copy of this order. However, there will be no order as to costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

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Railway Station Road
Kumbakonam

2. The Managing Director
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Pallavan Salai
Chennai - 2

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+2ccs to Mr.M.Palani, Advocate Sr 16875

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km/11.4.

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